

PT 95-41
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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M. H. C. DEVELOPMENT COMPANY, INC.)      Docket No.(s)  93-60-91  
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    Applicant                        )      PI No. 23-2-07-13-08-203-013.003  
                                     )      (Madison County)  
    v.                               )  
                                     )  
THE DEPARTMENT OF REVENUE             )      George H. Nafziger  
OF THE STATE OF ILLINOIS             )      Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney, James S. Sinclair, appeared on behalf of M. H. C. Development Company, Inc. (hereinafter referred to as the "Applicant").

SYNOPSIS: The hearing in this matter was held at the law offices of Stobbs and Sinclair, 500 Bond Street, Alton, Illinois, on May 3, 1995, to determine whether or not Madison County parcel No. 23-2-07-13-08-203-013.003 and the buildings thereon, should be exempt from real estate taxes for all, or part of, the 1993 assessment year.

Is the Applicant a charitable organization? Did the Applicant own the parcel here in issue during all, or part of, the 1993 assessment year? Was the Applicant, during 1993, in the process of adapting this parcel for exempt use? Following the submission of all of the evidence and a review of the record, it is determined that the Applicant is a charitable organization. It is also determined that the Applicant owned this parcel during the period September 16, 1993, through December 31, 1993. Finally, it is determined that the Applicant was in the process of adapting this parcel for exempt use during the period September 16, 1993, through December 31, 1993.

FINDINGS OF FACT: The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department Exhibits numbered 1 through 6B.

Mr. Roger Watkins, resource developer for Community Counseling Center of Northern Madison County, was present, and testified on behalf of the Applicant.

Mr. Kerry Miller, a member of the Madison County Board of Review, was also present.

On February 2, 1994, the Madison County Board of Review forwarded an Application for Property Tax Exemption To Board of Review, concerning this parcel for the 1993 assessment year, to the Department (Dept. Ex. No. 2). On October 20, 1994, the Department denied the exemption of the parcel here in issue for the 1993 assessment year (Dept. Ex. No. 3). On October 25, 1994, the Applicant's attorney requested a formal hearing in this matter (Dept. Ex. No. 4). The hearing held on May 3, 1995, was held pursuant to that request.

The Applicant was incorporated, pursuant to the "General Not For Profit Corporation Act of Illinois" on October 20, 1981, for purposes, which among others, included the following:

"To promote and conserve mental health for the people of Madison County;"

The Applicant was originally organized at a time when the Illinois Department of Mental Health and Developmental Disabilities required that mental health service providers, such as Community Counseling Center of Northern Madison County (hereinafter referred to as the "Counseling Center"), hold their real property in a separate corporation. The Applicant was organized as an affiliate of the Counseling Center to hold

title to its real property. I take Administrative Notice that the Department of Revenue determined that the Applicant qualified for exemption as a charitable organization in Docket No. 83-60-62. Subsequently, the law was changed, and the Applicant conveyed the property which it was holding for the Counseling Center to that organization.

During 1990, Counseling Center developed plans to construct housing for some of its mentally ill, and/or mentally retarded clients. On June 28, 1991, Counseling Center retained a consultant to coordinate this construction project, which it hoped would qualify for financing by the United States Department of Housing and Urban Development (hereinafter referred to as "HUD"). On August 27, 1991, an initial HUD Section 202 Application was filed. During September 1991, HUD notified the consultant that it would consider financing this project under HUD Section 811. The regulations issued pursuant to HUD Section 811 required that the title to a property which was the subject of HUD Section 811 financing must be held by a not-for-profit corporation, which only owned that particular property. Consequently, the Articles of Incorporation and bylaws of the Applicant were amended to conform to HUD Section 811 rules. On August 26, 1993, HUD issued a Firm Commitment letter, and on September 16, 1993, the Applicant acquired the parcel here in issue. On October 8, 1993, a closing with HUD was held. On October 15, 1993, construction began. Construction was substantially completed on two one-story buildings without basements, which each contained 8 one-bedroom apartments, on May 17, 1994. On August 1, 1994, the first tenants moved in. The fair market rent for these apartments is \$342.00 per month. The residents of these apartments, pursuant to HUD guidelines, pay 30% of their income to the Applicant, and HUD pays the balance of the rent to the Applicant in the form of a rent subsidy. For most of these residents, their primary source of income is Social Security SSI payments. The residents of these apartments, during

1994, actually paid rent of between \$133.00 per month, and \$189.00 per month. While the Applicant required the tenants to pay a security deposit equal to their share of one month's rent, they were allowed to pay this deposit in installments. The Applicant's policy is not to evict tenants because of inability to pay rent. Pursuant to the requirements of HUD, all of the residents of this facility are persons with mental disabilities.

Counseling Center has several staff members whose offices are located in the buildings on this parcel. Counseling Center staff members are at these buildings Monday through Friday, 9:00 A.M. to 8:00 P.M., and Saturdays and Sundays, 9:00 A.M. to 5:00 P.M. These staff members provide the residents with assistance with daily living skills, as well as protect their welfare and safety. No staff members live in the buildings on this parcel.

1. Based on the foregoing, I find that the Applicant has previously been determined by the Department to be a charitable organization.

2. I find that the Applicant had no capital, capital stock, or shareholders, and no one profited from the enterprise during 1993.

3. In view of the availability of the rent subsidies and the fact that the Applicant will not evict residents for inability to pay, I find that the benefits were available to an indefinite number of persons, that charity was dispensed to all who needed and applied for it, and that no obstacles were placed in the way of those seeking the benefits.

4. I find that the Applicant's primary sources of funds were resident rental payments and HUD subsidies.

5. Finally, I find that the Applicant owned this parcel during the period September 16, 1993, through December 31, 1993, and was in the process of adapting said parcel for exempt use during that period.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. I have previously found that the Applicant met each of the first five of the foregoing six guidelines. In addition, the Department has previously determined that the Applicant is a charitable organization. Consequently, I conclude that the Applicant is a charitable organization. I also conclude that the Applicant owned this parcel during the period September 16, 1993, through December 31, 1993. In addition, the Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. *Illinois Institute of Technology v. Skinner*, 49 Ill.2d 59 (1971); *People ex rel. Pearsall v. Catholic Bishop of Chicago*, 311 Ill. 11 (1924); *In re Application of County*

Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). I have previously found that the Applicant was in the process of adapting this parcel for exempt use during the period September 16, 1993, through December 31, 1993.

I therefore recommend that Madison County parcel No. 23-2-07-13-08-203-013.003 be exempt from real estate tax for 29% of the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge